**Telford & Wrekin Council**

**Schools HR Advisory Service**

**Model Policy Document**

Capability Procedure

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| Most recent revision | March 2025 |
| Consulted on recent revisions with the following Trade Unions:  ASCL\*  NEU  NASUWT  NAHT  Unison  GMB  Unite | February 2025 |
| Adopted by [insert name of school/trust] | [insert date] |

1. **Introduction**

This procedure sets out the arrangements that will apply in serious cases of poor performance where there have been persistent failures to meet job expectations, resulting in negative consequences on pupils and the organisation or where there have been less serious performance concerns that the appraisal process, including any informal support arrangements, has been unable to address.

Employees will be fully aware of their progression to management under this Procedure as set out in Section 8 of the Appraisal Policy.

The aim of this policy is to support employees to sustain good performance, and this requires clear communication in terms of shortfalls, support and the required outcome expected within a specified timeframe.

This policy applies to all employees within the school, excluding ECT’s.

Where the capability of the headteacher/Principal/CEO (delete as applicable) is being reviewed, the Chair of Governors (or nominated other Governor) will assume responsibility. For all other employees, this responsibility will lie with the Headteacher/Principal/CEO (delete as applicable) or appropriate manager.

1. **Other considerations**

If an employee goes off sick at any point during the formal capability process they will be managed in line with the Sickness Absence Policy and the Capability process will be suspended. On the employees return to work, the capability process will resume, after an agreed period of a supported return to work, unless it is clear that these performance concerns were linked to their health condition; in which case this will be managed informally in line with the Appraisal Policy.

Where a grievance is raised by an employee during the capability process and it is related to the process, this will be investigated by an independent manager in accordance with the Grievance Scheme. The capability process will normally continue unless there are justifiable reasons for suspending it pending the outcome of the grievance.

**3. Formal Capability Process**

Where previous support provided through the appraisal process has not achieved sustained good performance, it may be necessary to progress through the following steps of this formal procedure.

The aim of this will still be to achieve sustained good performance and there are opportunities where the capability procedure can come to an end. However, there is also the possibility that should sustained good performance not be achieved, despite appropriate support having been provided, formal warnings may be issued and ongoing poor performance may result in dismissal.

Moving to this procedure will suspend the appraisal process.

A flow chart outlining this procedure is at Appendix 1

An example of an agenda for these formal meetings and any subsequent appeals can be found at Appendices 2 & 3.

**3.1 Stage 1 Formal Capability Meeting**

The employee will be given a minimum of 5 working days’ notice of the formal capability meeting.

They will be provided with written notification of the meeting which will contain information about the areas of underperformance, including reference to any relevant professional standards and the possible consequences.

It will also contain copies of any written evidence; details of the time and place of the meeting; and will advise the employee of their right to be accompanied by a companion, who may be a colleague, a trade union official, or a trade union representative who has been certified by their union as being competent.

Employees are entitled to reasonably request an alternative date where they are unable to attend the original date proposed.

While a teacher or school leader is in capability procedures, pay progression will be withheld.

This meeting is intended to establish the facts. It will be conducted by the Chair of Governors or an appropriate member of the Trust (for headteacherCEO(delete as applicable) capability meetings) or headteacher/manager (for other employees)*.*

The meeting will set out the required standards which are believed to have been failed to be met by the employee and gives the employee an opportunity to respond to these concerns about their performance and to make any relevant representations. This may provide new information or a different context to the information already collected. During the meeting, evidence shall be presented, and witnesses shall be called where appropriate and necessary. The employee shall be allowed to ask questions, present their own evidence and rely on their own witnesses where appropriate and necessary, and will be permitted to respond to the evidence and ask questions.

The person conducting the meeting may conclude that there are insufficient grounds for pursuing the capability issue and that it would be more appropriate to continue to address the remaining concerns through the appraisal process. In such cases, the capability procedure will come to an end. The person conducting the meeting may also adjourn the meeting; for example, if they decide that further information is needed, or that more time is needed in which to consider any additional information.

In other cases, the meeting will continue. During the meeting, the person conducting the meeting will:

* Identify the professional shortcomings, for example which of the standards have been failed to have been met.
* give clear guidance on the improved standard of performance needed to ensure that the employee can be removed from the formal capability procedures(this may include the setting of new objectives focused on the specific weaknesses that need to be addressed, any success criteria that might be appropriate and the evidence that will be used to assess whether or not the necessary improvement has been made);
* explain any support that will be available to help the employee improve their performance, including consideration of redeployment.
* set out the timetable for improvement taking into account the employees personal circumstances. This may include any medical conditions, working pattern, well-being support needs, or disabilities protected by the Equality Act 2010. The timetable will depend on the circumstances of the individual case but in straightforward cases could be xxxxxxx); and • explain how performance will be monitored and reviewed.
* explain how performance will be monitored and reviewed.
* Warn the employee formally that failure ti improve within the set period could ultimately lead to dismissal.

Notes will be taken of formal meetings and a copy sent to the employee.

Where a warning is issued, the employee will be informed in writing of the matters covered in the bullet points above and given information about the timing and handling of the review stage and the procedures and time limits for appealing against a warning.

**3.2 Issuing warnings**

Issuing a warning is relevant to any case where continued concern about the standard of performance is justified, despite support having been put in place through the Appraisal Policy. The decision on which level of warning to issue will depend on the seriousness of the problem. If performance is unsatisfactory, a written warning will be the next step.

Should a final written warning be issued, and the employee’s performance not have improved within the agreed timescale the employee will then be invited to a decision meeting rather than a formal review meeting.

Please see below types of and length of warnings:

1. First Written warning (live for 6 months)
2. Final written warning (live for 12 months)

Where an employee is issued a warning but reaches the acceptable levels of performance to end the capability procedure, the warning is still valid for the remaining period of time. Should this level of performance decline again and the warning is still live, the formal stages of this procedure will be reinstated.

Where levels of performance decline again but this is outside of the time limit of the warning, any decision on what level of the process will be reinstated will take into account the following.

* the specific area of performance decline, for example, is this the same area or something different.
* the support provided to date and what further support would be required.
* the severity of the decline.
* and the proximity to the end of the warning.

**3.3 Monitoring and Review Period** **following a Formal Capability Meeting.**

A performance monitoring and review period will follow the formal capability meeting in line with the timescales set at the Stage 1 meeting.

Formal monitoring, evaluation, guidance and support will continue during this period.

The employee will be invited to a Stage 2 - Formal Review meeting, unless they were issued with a final written warning, and their performance has not improved to the required level when they will be invited to a Stage 3 - Decision meeting.

**3.4 Stage 2 - Formal Review Meeting**

As with the Stage 1 capability meeting, a minimum of 5 working days’ notice will be given and the notification will give details of the time and place of the meeting and will advise the employee of their right to be accompanied by a companion, who may be a colleague, a trade union official, or a trade union representative who has been certified by their union as being competent.

Employees are entitled to reasonably request an alternative date where they are unable to attend the original date proposed (for example a date that is within five working days of the original proposed date)

If the person conducting the meeting is satisfied that the employee has made sufficient improvement, the capability procedure will cease, and the appraisal process will re-start along with any agreed support.

In other cases:

* If some progress has been made and there is confidence that more is likely, it may be appropriate to extend the monitoring and review period and set a further timescale for improvement
* If no, or insufficient improvement has been made during the monitoring and review period, the employee will receive a final written warning which will set out the areas where performance standards have not been met, targets for improvement, any measures (training and supervision) which will be taken to improve performance, a period for the review and the consequences of not meeting expected performance standards

As before, notes will be taken of formal meetings and a copy sent to the employee. The final written warning will mirror any previous warnings that have been issued.

Where a final warning is issued, the employee will be informed in writing that failure to achieve an acceptable standard of performance (within the set timescale), may result in dismissal, be given information about the handling of the further monitoring and review period and the procedure and time limits for appealing against the final warning.

The employee will be invited to a decision meeting at the end of this monitoring period.

**3.5 Stage 3 - Decision Meeting**

At least 10 working days’ notice of a Stage 3 Decision Meeting should be given. The notification will give details of the time and place of the meeting and will advise the employee of their right to be accompanied by a companion, which may be a colleague, a trade union official, or a trade union representative who has been certified by their union as being competent.

If an acceptable standard of performance has been achieved during the further monitoring and review period, the capability procedure will end, and the appraisal process will re-start.

However, should performance remain unsatisfactory, despite support and consideration has been

given to the option of redeployment to an alternative role, a decision will be made that the final

written warning should be extended, or the employee should be dismissed.

Dismissal will be with notice or payment in lieu of notice.

Community & Voluntary Controlled Schools Only (delete as applicable)

Before the decision to dismiss is made, the school will discuss the matter with the Local Authorityas the employer, unless the Local Authority is represented at this meeting. The Local Authority may attend and offer advice at all proceedings relating to dismissal of any employee and the decision maker should consider this advice.

Where employees work solely at this school, the Local Authority will terminate the employee’s contract with the Local Authority, giving such notice as is required under that contract within fourteen days of the date of the notification.

Where they work in more than one school, the local authority will require them to cease to work at that school too.

The employee will be informed as soon as possible of the reasons for the dismissal, the date on which the employment contract will end, the appropriate period of notice, any entitlement to holiday pay and their right of appeal.

**3.6 Appeal**

If the employee feels that a decision to dismiss them, or other action taken against them*,* is wrong or unjust, they may appeal in writing to the Chair of Governors within ten working days of receipt of the decision, setting out at the same time the grounds for appeal.

Appeals will be heard without unreasonable delay by the Governors Appeals Committee. The same arrangements for notification and right to be accompanied by a companion will apply as with formal capability and review meetings (at least 5 working days) and, as with other formal meetings, notes will be taken and a copy sent to the employee.

The appeal will be dealt with impartially and by managers or governors who have not previously been involved in the case.

The employee will be informed in writing of the results of the appeal hearing within 5 working days.

The decision of the Appeals Committee is final.

**4. General Principles Underlying This Procedure**

**4.1 ACAS Code of Practice on Disciplinary and Grievance Procedures**

This policy will be implemented in accordance with the provisions of the ACAS Code of Practice.

**4.2 Confidentiality**

The Capability process will be treated with confidentiality. However, the desire for confidentiality does not override the need for the headteacher and governing body to quality-assure the operation and effectiveness of the Capability Procedure.

**4.3 Consistency of Treatment and Fairness**

The Governing Body is committed to ensuring consistency of treatment and fairness. It will abide by all relevant equality legislation, including the duty to make reasonable adjustments for disabled staff. The Governing Body is aware of the guidance on the Equality Act issued by the Department for Education.

**4.4 Monitoring and Evaluation**

The Governing Body and headteacher will monitor the operation and effectiveness of the school’s appraisal arrangements. This will include equality monitoring and ensuring that the arrangements in place for capability minimise the impact of workload for all parties involved.

This will include ensuring that the arrangements minimise the impact on workload for all parties involved.

**Appendix 1 – Capability Procedure Flow Chart**

**Stage 1 – Formal Capability Meeting (3.1)**

Are there sufficient grounds for pursuing the capability process?

**NO**

Continue to manage informally through the Appraisal Process

**YES**

Warning to be issued and a clear timescale for improvement given

**Monitoring & Review Period (3.3)**

Was warning issued a final written warning?

**NO**

**YES**

Has performance improved?

**Stage 2 Formal Review Meeting (3.4)**

Has performance improved?

Has performance improved?

**NO**

Proceed to Stage 3 Decision Meeting

**YES**

Cease Capability or Extend Monitoring Period and proceed to Stage 2 Review meeting at end of monitoring period

**NO**

Issue a Final Written Warning and progress to Stage 3 Decision Meeting at end of monitoring period.

**YES**

Cease Capability or Extend Monitoring Period and proceed to Stage 3 Decision Meeting at end of monitoring period

Dismissal with notice on the grounds capability

**Appeal Stage (3.6)**

**Appendix 2**

**Agenda for Formal Capability Meetings**

1. Introduce those present and confirm the purpose of the meeting and that employee understands the procedure.
2. Confirm the employee understands their representation rights.
3. Detail the details of capability case.
4. Allow the employee to reply and make any representations.
5. Ask any questions or pursue specific points.
6. Allow employee to make any final points.
7. Adjourn to consider decision
8. Reconvene meeting and ask employee and representative to return
9. Give decision to employee

**Where decision is to issue a formal warning**

1. Confirm professional shortcomings.
2. Give clear guidance on the improved standard of performance needed to end the capability procedure.

12. Explain the support that will be available, and how performance will be monitored over the following weeks.

13. Identify the timetable for improvement and agree a date for the formal review/decision meeting.

14. Explain the level of warning awarded and make it clearly understood that failure to improve may lead to dismissal.

15. Confirm the right of appeal against the formal warning

16. Write to the employee confirming the decision within 5 working days.

**Appendix 3**

**Agenda for Appeal Hearing**

1. Introduce those present and confirm purpose of the meeting and that the employee understands the procedure.
2. Confirm the employee understands their representation rights.
3. Employee to specify grounds for appeal and detail case.
4. Those hearing appeal and those who issued original sanction to ask any questions.
5. Those who issued original sanction to give response.
6. Those hearing appeal and employee to ask any questions.
7. Those who issued original sanction to make any final points
8. Employee to make any final points
9. Adjourn to consider decision.
10. Reconvene meeting asking all parties to return.
11. Give decision.
12. Explain that the decision will be confirmed in writing within 5 working days and that there is no further right of appeal.